

INSIDE *ALEC*

February 2009

A Publication of the American Legislative Exchange Council

**Focus
on
Energy**

Energy and the Road to Economic Recovery

**Climate Change Action
Will Have to Wait**

**Is Renewable Energy
Endangering Our Forests?**

**Ready for Tomorrow's
Energy Demand?**

Also in this Issue:
New Model Legislation

ALEC's Newest State Factor

Criminals on the Streets: A Citizen's Right to Know



Bail for the most part lives on the edges of American life. Most people will never need the services of a bail agent and beyond knowing bail is “something” that gets people out of jail, most people have only a vague idea of what it involves. Yet, bail is vital to a smooth-functioning criminal justice system in America. It is like the bottom row of bricks on a house. Without bail, public safety

would collapse, and jails would be completely overcrowded. And, even though the system works quietly and efficiently in the background, it should command the attention of policymakers.

There are two primary methodologies to bail in America: one run by the private-sector, commercial surety bail, and the other run by the government pretrial release agencies. One costs the public nothing, the other consumes tax dollars. One system ensures that the accused goes back to court to face charges, and ensures they commit fewer crimes while awaiting that court date. The other option has a poor track record on both of these counts. One picks up almost all of its fugitives, the other seldom, if ever, does. One works and the other does not. The system that works is commercial surety bail and the one that does not is government-run pretrial services.

Why are there two systems? About four decades ago, Pretrial Services got its start in order to help fill a gap. Then, as now, among the multitudes of people arrested were many indigent first-time non-violent offenders, people who commit low-level crimes, but are too poor to afford bail. Pretrial Services was formed to attend to these unfortunates. However, over time, Pretrial Services has expanded nationwide into approximately 400 government funded entities and has amplified its mission from helping the indigent to helping all manner of defendants, including dangerous felons. Beyond merely assisting in the release of the non-violent indigent defendant, Pretrial Services is making a concerted effort to eliminate private-sector commercial bail and replace it with taxpayer-funded agencies as evidenced by their own adopted standards. In other words, they want the government to control the bail business entirely.

In its effort to eliminate the private-sector option, pretrial services have invoked an array of ideological principles all of which can be boiled down to “government is superior, more dependable than the private-sector, and does it better.” Not surprisingly, commercial bail has contested this assumption for decades.

The full report is available on ALEC's website at www.alec.org.

ALEC Calendar

| | | |
|--------------------|-------------------------------|------------------|
| May 1-2, 2009 | Spring Task Force Summit | Memphis, TN |
| July 15-18, 2009 | ALEC Annual Meeting | Atlanta, GA |
| December 2-4, 2009 | States & Nation Policy Summit | Washington, D.C. |

INSIDE ALEC

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Legislative Exchange Council

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AMERICAN LEGISLATIVE EXCHANGE COUNCIL
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State Spotlight: Model Legislators



School Choice Growing by Leaps and Bounds in Georgia

By Rep. David Casas



In 2005, in an article in the *Washington Post*, the father of the school choice movement, Milton Friedman, must have had a premonition. He predicted that 50 years after launching the school voucher movement, one state would lead the way so parents might be able to use their tax dollars to send their children to *any* school of their choice.

“I sense that we are on the verge of a breakthrough in one state or another, which will then sweep like wildfire through the rest of the country,” Friedman wrote in the *Post*.

Georgia, it turns out, is one of those states.

Unfortunately, Friedman passed away before Georgia, just months later, adopted a landmark school voucher program followed by a tuition tax credit program.

In 2007, I sponsored the Georgia Special Needs Scholarship in the Georgia House. It provides children with disabilities the opportunity to earn a state-funded scholarship to transfer to the public or private school of their parents’ choosing.

In the 2007-08 school year, 899 children earned scholarships averaging \$6,260 each to transfer to private schools. Most of those children were diagnosed with learning disabilities.

This school year, there was a 78 percent spike in the number of children earning the Georgia Special Needs Scholarship. There are 1,596 pupils who have scholarships averaging \$6,331. Most children with scholarships are in middle grades -- 5, 6, and 7.

In addition, we are seeing the free market at work, as a new school for children with learning disabilities opened its doors in metro Atlanta because of the program. Additional schools with similar missions are expected to relocate here because of the voucher program.

Meanwhile, as a second victory, Georgia adopted a Tuition Tax Credit Program in 2008, which I also sponsored in the state House. This program allows individuals and

corporations to obtain a dollar-for-dollar tax credit for donations to student scholarship organizations. These organizations provide scholarships for students to attend private schools.

My legislation, capped at raising \$50 million in tax credits annually, allows couples to earn a \$2,500 tax credit if they donate to the Student Scholarship Organization (SSO) of their choice. An individual can earn a \$1,000 tax credit. Corporations can earn up to 75 percent of the taxes due the state.

This legislation is particularly amazing because there are no restrictions on scholarships awarded to families. It is not only available to low-income families, which makes it the most open school voucher-type legislation in the nation.

SSOs are free to choose who they give scholarships to. It could be to children in specific regions. The scholarships could be for children in particular grades, or whose parents lost jobs, or students who want to pursue a certain course of study. The possibilities are endless. So far, there are six SSOs that have formed in Georgia to raise funds through tax credits including one organized by the Jewish community, another by the Catholic Church, and another by an association of Christian schools.

About 50 scholarships have been awarded during these first six months of this program, still in its infancy. But this tax credit has enormous potential as taxpayers look for ways to avoid paying the government. They can write a check to the state revenue department or instead send a check to one of these worthwhile SSOs that make school choice possible for more Georgia kids.

Needless to say, as Friedman predicted, one state has emerged as the shining light in the school choice movement. I’m proud to say it’s Georgia.

Rep. David Casas is a Republican state representative from the suburbs of Atlanta. As a legislator and public school teacher, Rep. Casas has been at the forefront of education reform in Georgia and successfully introduced, and helped pass, two ALEC Model Bills—the Special-Needs Scholarship Programs Act and the Great Schools Tax Credit Act. For his efforts, ALEC recognized Rep. Casas as one of its legislators of the year in 2008.



Not Seeing the Forest for the Trees: Renewable Energy Incentives Could Deal a Blow to America's Forests

By David Liebetreu



It's no secret that when the government uses tax subsidies to pick winners and losers, unintended consequences abound. Despite the lessons learned from ethanol subsidies, Congress and state legislatures continue developing incentives and mandates for renewable energy production without understanding their secondary impacts. These policies, if not carefully crafted, threaten to damage the sustainability of America's forests and the viability of the U.S. forest products industry.

Threat to Forest Sustainability

The risk to our forests begins with policies that do not take regional differences into account. Not all forms of renewable energy, like wind and solar, are equally available in every part of the country, and the potential for renewable energy production in the Southern U.S. rests heavily on its forest biomass. The Southern forest represents 29 percent of total forest acres in the U.S., and this complex biological system provides a sustainable, cost-competitive supply for 60 percent of our nation's traditional forest products output. Due to wood's abundance, relative cost advantage, consistent material characteristics, and its established supply chain, it is reasonable to expect that renewable energy markets would select wood as a preferred biomass feedstock.

While wood may seem like the best choice, it's important to understand that not all renewable energy sources are created equal—the term renewable does not mean sustainable. While the forest industry holds itself accountable for managing natural resources responsibly, there has not been a push to ask the same of the bioenergy producers that use trees for fuel. Poorly crafted mandates or economic incentives for renewable energy can cause severe harm to the forest's biological and economic systems, creating a conflict between the forest products industry and renewable energy producers that may endanger the long term sustainability of Southern forests.

The growing popularity of renewable energy mandates could quickly drive demand for forest biomass to unsustainable levels. Legislatures in 26 states have already implemented Renewable Portfolio Standards (RPS) that require utilities to meet a specified amount of their fuel mix with renewable energy sources. Legislation to mandate a one-size-fits-all 15 percent federal RPS has already passed the U.S. House twice, and appears to have the momentum to pass the Senate this year. Additionally, the Renewable Fuels Standard (RFS) passed by Congress in 2007 set stringent targets for the percentage of renewable biofuels to be included in all retail transportation fuel sales. Some of these targets include cellulosic alcohol made from woody plants like trees.

Wood and derived fuels currently account for about one-third of total renewable energy consumption in the U.S. If one considers only non-hydro sources, the figure jumps to 50 percent. If one-third of the RFS and proposed RPS targets are met with increased wood consumption, it would result in a near doubling of demand for wood fiber in the U.S. Clearly this additional demand for wood is not realistic, and would place demands on the nation's forests that are



unsustainable.¹ Burning wood is simply not the best solution to our domestic energy needs.

Impact to the Forest Products Industry

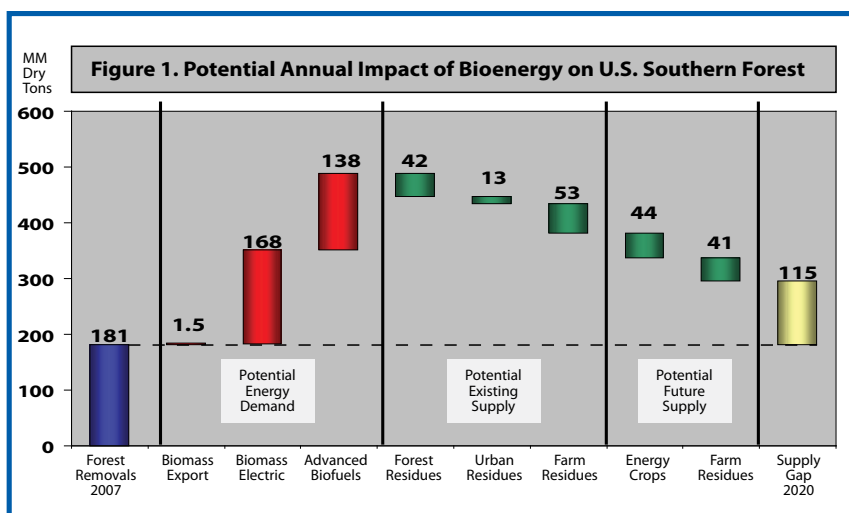
Beyond the negative impacts that this unsustainable condition would have on the Southern forest, incentives and mandates can lead to high market tension and rising fiber costs. Fiber is the lifeblood of our industry and the main feedstock necessary to manufacture our value-added products. International Paper is concerned about these proposals because they can compromise our ability to secure adequate and affordable fiber for both raw materials and our carbon-neutral fuel. The forest products industry is the nation's largest user of renewable energy, and 73 percent of the energy International Paper uses to power our U.S. mills comes from biomass. Financial incentives for renewable energy production, which currently exclude the renewable energy being produced and consumed by the forest products industry, would create an uneven playing field in forest biomass markets.

The escalating cost of forest biomass, caused by mandated renewable energy demand, will be absorbed by subsidies and rate payers in the renewable energy markets while increased fiber costs for paper and wood products will slow demand and weaken the health of the Southern forest products industry. Already struggling financially, the forest products industry earned only a 4.5 percent rate of return on capital and 3.5 percent profit margin from 2000 to 2007. The implications for jobs in rural parts of the country where our industry's largest facilities are generally located, along with the local economies that rely on them, would be significant.

The forest products industry has demonstrated that the conversion of trees into paper and wood products creates eight times the wealth and thirteen times the employment of converting trees into energy.² Rising fiber costs and an uneven playing field with new biofuel and bioenergy competitors could cause significant market deterioration and have a serious negative impact on the industry and its jobs.

Free Market Forces Can Work

For more than 100 years, free market forces have balanced forest products demand with forest biomass supply in the South. Recreational uses have also been provided for and are in reasonable balance with commercial uses. Landowners have had adequate financial incentive to retain forests, increase growth, and regenerate following harvest, while the region's forest products industry demand has been constrained by rising costs and global competition. Recent mandates



and incentives for renewable energy production have the potential to threaten forest sustainability and the forest products industry by disrupting these free market drivers.

International Paper and the forest products industry insist that any renewable energy policies ensure the sustainability and viability of the forest and our industry. We are opposed to mandates, subsidies, and incentives, but if the government continues to implement these mandates it should also foster sustainable forest management by increasing the supply of fiber (i.e. growing more trees and opening up public lands for harvest) and offering equal treatment for the bioenergy produced by the forest products industry.

If legislation is developed without understanding its impact to existing industries and markets, America's forests—and our ultimate goal of achieving energy independence—might both go up in smoke.

Figure 1 illustrates the potential magnitude of a change in biomass demand and the potential sources of biomass supply as proposed by DOE/USDA. Renewable energy policy, driven by mandates and incentives, may create a supply gap of 115 million dry tons holding consequences for the environment and the economy.

David Liebetreu is Vice President of Global Sourcing at International Paper. Mr. Liebetreu presented to ALEC's Energy Subcommittee of the Natural Resources Taskforce during our recent States and Nation Policy Summit in Washington. For more information, contact Taskforce member Donna Gehlhaart, Senior Government Relations Manager – State Public Affairs at International Paper (202.628.1309).

¹ *Emerging Biomass Industry: Impact on Woodfiber Markets*, RISI, 2008

² *Pöyry Forest Industry Consulting Oy and Foreco Oy for CEPI* - <http://212.3.246.141/Objects/1/Files/Jokinen.pdf>

States and Nation Policy Summit: Policy Leaders Gather in Washington, D.C.



ALEC's 2008 National Chairman, Senator Steve Faris of Arkansas (right) passes the gavel to ALEC's 2009 National Chairman, Speaker Bill Howell of Virginia.



ALEC's outgoing Private Enterprise Board Chairman, Jerry Watson of the American Bail Coalition (right), congratulates ALEC's new Private Enterprise Board Chairman, Jim Epperson of AT&T.

The American Legislative Exchange Council's annual States & Nation Policy Summit was held in Washington, D.C. at the Marriott Wardman Park Hotel from December 4 to 6, 2008. State legislators from across the United States gathered for three days of intensive discussions on the critical issues facing the states and nation, shared their knowledge and experiences with each other, and heard from national leaders and renowned policy experts who share their commitment to common sense, conservative policy.

ALEC conferences are renowned for developing cutting-edge legislative policy and garnering top policy speakers. This year's speakers included Indiana Governor Mitch Daniels, who spoke on state budget issues; former Speaker of the U.S. House of Representatives, Newt Gingrich; syndicated columnist Amity Shlaes, author of *The Forgotten Man: A New History of the Great Depression* and the recipient of ALEC's prestigious Warren Brookes Award for Excellence in Journalism. Both Ms. Shlaes and Speaker Gingrich were on hand to autograph books and meet ALEC members.

Two current Members of Congress also addressed ALEC. U.S. Rep. Mary Fallin (OK), a former ALEC member of the year and State Chair, spoke on federalism issues and what the states can expect from the new Congress. U.S. Rep Tom Price (GA), one of only a small handful of medical doctor currently serving in the House of Representatives, spoke on health care reform issues.

ALEC Task Force members also took full advantage of their time in Washington, D.C. and approved twenty new Model Bills (see page 16 for a complete listing and description).



▲ Indiana Governor Mitch Daniels discusses state budget policy with ALEC members.



◀ Former Speaker of the U.S. House of Representatives, Newt Gingrich, addresses ALEC members.

▼ ALEC members enjoy Holiday Gala Reception at the States and Nation Policy Summit.



Off-limits Oil and Natural Gas Can Provide Jobs, Revenues, and Energy Security

By Jack N. Gerard



As the new President and Congress take office, America is faced with daunting economic and energy challenges. These challenges are directly related and we cannot solve our economic problems if we do not meet our energy challenges. Energy drives our economy and sustains our American standard

of living, providing well-paying jobs, higher incomes, economic growth, and global competitiveness. And increased energy development can help put our nation on the road to economic recovery.

The dramatic decline in crude oil prices has provided U.S. consumers with welcome relief from high gasoline and other fuel prices. However, the global energy situation remains volatile and uncertain. Moreover, in its *Annual Energy Outlook 2009*, the U.S. Energy Information Administration projects continued heavy U.S. fuels demand in coming decades.

A new study by ICF International, commissioned by the American Petroleum Institute, underscores the crucial energy-economic relationship. The study found that development of much-needed oil and natural gas resources that have been kept off-limits by Congress for decades could create more than 160,000 new jobs by 2030. Those new jobs would be in addition to the approximately 6 million jobs the U.S. oil and natural gas industry already supports—1.8 million people directly employed by the industry and more than 4 million indirect jobs. Increased oil and natural gas development on non-park federal lands and in federal waters would mean even more, and better, job opportunities—the average salary of exploration and production jobs is more than twice the national average.

Many of these jobs are the “green jobs” our society desires. While companies in our industry focus

primarily on oil and natural gas, they have long been pioneers in developing alternatives and expanding our use of virtually all sources of energy. They are among worldwide leaders in wind energy, photovoltaic solar cells, geothermal energy, and hydrogen fuel cell technology. In fact, the oil and natural gas industry invested an estimated \$121.4 billion between 2000 and 2007 in emerging energy technologies including renewable, frontier hydrocarbons, such as shale and oil sands, and end-use technologies, such as fuel cells. This investment represents 65 percent of the total spent by all of industry and the federal government combined on emerging energy technologies during this time period. Our companies are committed to being on the cutting edge of technology, keeping America economically strong for decades to come, and contributing to the growth of green jobs.

Increased oil and natural gas development not only creates more jobs and provides more energy, it also generates significant government revenues. In fact, in November, the U.S. Department of the Interior reported that it accrued a record \$23.4 billion from 2008 energy production—double the previous year’s revenue. The ICF study shows that developing the offshore areas that had been subject to Congressional moratoria until recently, as well as the resources in Alaska’s Arctic National Wildlife Refuge, and a small portion of currently unavailable federal lands in the Rockies, would increase U.S. crude oil production by as much as 2 million barrels per day in 2030, offsetting nearly a fifth of the nation’s oil imports. Natural gas production could increase by 5.34 billion cubic feet per day, or the equivalent of 61 percent of the expected natural gas imports in 2030.

The study found that development of these areas could generate more than \$1.7 trillion in government revenues that would help support vital programs and reduce pressure on American taxpayers. These revenues

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are particularly needed by states and communities facing budget shortfalls. These governments are being forced to lay off teachers, reduce police protection, limit repair of roads and bridges, and cut back on other important programs.

The ICF study also estimated that development of all U.S. oil and natural gas resources on federal lands could produce more than \$4 trillion in revenues over the life of the resources.

The ICF study is only the latest evidence of how energy and the economy are intrinsically linked. If we want to strengthen our economy, bolstering U.S. energy development is one important way to do it. More energy could help keep prices down for fuel consumers and lead to reduced energy costs for U.S. businesses, while ensuring that we meet our future energy and economic needs.

The oil and natural gas industry has been meeting energy challenges throughout its history and we continue to meet the massive and varied energy needs of American consumers. But our industry does not operate behind a Teflon shield when it comes to energy policy; harmful, counter-productive policies make it more difficult for us to do our job. Nor are we immune to the effects of the current economic crisis, and some companies have had to reduce their investments. Time will tell the full impact of this crisis, but ours is a

cyclical industry. We've gotten through economic crises before and we will get through this one as well.

We are at a historic turning point for our country and its energy policies. Record high gasoline prices in 2008 focused public attention on energy in the United States in a way not seen since the 1970s. Energy was a major issue all year in the presidential campaign. Public attitudes have changed dramatically on the need for domestic energy development. Two-thirds of Americans in exit polls in November's election said they supported increased offshore drilling.

What we must do is clear. We need to develop the full range of energy sources, including renewables and alternatives. But we must also continue to increase and diversify our oil and natural gas sources, both at home and abroad. We have abundant volumes of oil and natural gas resources beneath federal lands, but for decades, many of these resources have been placed off-limits to development.

Federal lands hold enough undiscovered recoverable oil to produce gasoline for more than 65 million cars for 60 years. They also hold enough undiscovered recoverable natural gas to heat 60 million households for 160 years. And these estimates could very well be on the low side. There are many examples of how the government's initial estimates dramatically underestimated the amount of actual resources. For example, in 1987, the U.S. Minerals Management Service (MMS) estimated that there were 9 billion barrels of oil in the Gulf of Mexico. By 2006, after major advances in seismic technology and deepwater drilling techniques, the MMS resource estimate for that area had ballooned to 45 billion barrels.

The new President and Congress should not re-impose the recently lifted offshore leasing moratoria or place obstacles to the development of these resources. Moreover, most of the Eastern Gulf of Mexico and portions of the Central Gulf still remain under moratoria, keeping billions of barrels of oil and trillions of cubic feet of natural gas off-limits. These areas should be opened to development.

If our companies are provided the access they need to domestic oil and natural gas resources, they will employ

Continued on page 13

Foundations 101

A Primer on Grant-Making Institutions

By Sue Santa

What do pap smears for women, emergency 9-1-1, and highway line markers have in common? They were all public goods that were originally funded by private philanthropic grantmakers. Grantmaking foundations are to be credited with significant support of these and many other life-saving innovations.

When you spend a morning enjoying Sesame Street with your child or grandchild, visit your local public library, or call upon a Hospice group to provide dignity and loving-care to your terminally ill loved-one, remember that these programs too resulted from the early support of American philanthropists and foundations.

While more than 75,000 foundations exist in the United States today, with over 6,500 new foundations having been established in 2008 alone (source: The Foundation Center), when asked, 56 percent of influential Americans were unable to name a single foundation (source: Philanthropy Awareness Initiative). Though responsible for numerous innovations that have improved the lives of every American, the work of private foundations remains largely concealed.

The Unique Tradition of American Philanthropy

A strong American philanthropic tradition exists for two reasons, one cultural and one economic. From the founding onward, Americans have taken it upon themselves to join together in an attempt to solve society's toughest challenges. Voluntarism existed from the very first days.

Just as important are the economic traditions in America. From the earliest days of our republic, there was a strong sense that economic freedom leads to the creation of prosperity. Great wealth was created first by merchants, then industrialists (Ford, Rockefeller, Carnegie) and subsequently over the decades by a multitude of entrepreneurs. Most recently wealth has been created by technology, finance, and entertainment.



Not only did these business pursuits help build and employ middle-class Americans, bring affordable technologies within reach of everyday citizens, and improve everyday living, it also allowed for the creation of fortunes so vast that there were millions and, in recent cases, billions of dollars of monies left to spend on charitable pursuits.

Philanthropy Today

Despite the lack of awareness regarding foundation work, an increasing amount of press has been devoted to the topic. In large part, this is due to the recent establishment of the largest foundation in the world: the Bill & Melinda Gates Foundation. With its inception in 1994 and an initial contribution to the foundation of \$94 million, the Gates Foundation made instant news. The foundation continued to make news with Warren Buffett's announcement that he would contribute the vast majority of his fortune to this rather new foundation, making the Gates Foundation the world's largest grantmaker.

Foundations such as the Gates

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(or Ford or Carnegie) foundation may receive greater recognition in the media and elsewhere, but these foundations are hardly representative of the philanthropic field as a whole. These foundations represent only a small number of American foundations both in terms of size, mission, and focus.

In nearly every community across America, you can find at least one foundation. These foundations may have several thousand or hundreds of millions of dollars in assets. Typically, these foundations support local causes and focus on a few areas of giving such as education, poverty relief, or the arts. In some cases, however, foundations support only a single issue or range of issues. For instance, the Oberkotter Foundation in Pennsylvania exists for the narrow purpose of supporting educational institutions and centers for the deaf that use the auditory/oral or auditory/verbal method exclusively and research in the area of hearing-impairment where interdisciplinary resources are used.

Very few of us have ever heard of the Oberkotter Foundation, but tens of thousands hearing-impaired children and adults across the country have been served by its generosity. Oberkotter supports organizations such as the Alexander Graham Bell Association for the

Deaf and Hard of Hearing in Washington, D.C., the Chinchuba Institute KidSpeak Center in Louisiana, OPTION Schools in Omaha, Nebraska, and the six Clarke Schools around the nation which focus on research, curriculum development, and training of teachers for the hearing-impaired.

Because of their focused approach, Oberkotter is largely unknown to those in the broader foundation community, but to those who are beneficiaries of their largesse, their contributions are vital. A great strength of the Oberkotter Foundation is its specialized knowledge and its ability to discern the most effective means of improving the lives of the hearing-impaired.

Another foundation, the Steans Family Foundation has not selected a single issue, but rather a single neighborhood, on which to focus its giving. "The Steans Family Foundation concentrates its grant making and programs in North Lawndale, a revitalizing neighborhood on Chicago's West side. By dedicating time, money, and skills, this small family foundation works in partnership with local residents and institutions to build and enhance the North Lawndale Community. The Foundation's work supports the idea that effective

revitalization can occur within the embedded social and economic networks that create and sustain communities,”

(Source: Steans Family Foundation website). Steans has a narrow mission, but in-depth knowledge of a particular community and its needs.

Other foundations take a less targeted approach, but to fulfill their missions they might provide funding to building projects (Campbell Foundation, Atlanta, GA) or support a wide variety of causes in a given geographic area (the Heinz Endowments in Pittsburgh, PA). Regardless of the particular focus, whether topical or geographic, foundations build expertise that makes them knowledgeable in those areas pertinent to their missions.

In recent months, there has been a growing movement to try to regulate or direct foundation resources into preferred types of charitable ends—whether those ends be rural philanthropy, giving to diverse and minority-led communities, or children’s health programs. While these are all worthy endeavors, politicizing philanthropy will surely result in unintended consequences—whether those consequences dampen the creativity of organizations such as the Oberkötter and Steans Family Foundations or serve to undercut charitable giving.

Most notably, in early 2008, the California legislature attempted to pass legislation to regulate giving at its largest foundations (those with over \$250M in assets) and to direct greater resources to “minority-

GLOSSARY OF TERMS

What Is a Tax-Exempt Organization?*

A tax-exempt organization is an organization that is exempt from federal income taxes under the Internal Revenue Code (IRC or the Code). Although the Code describes more than 30 types of organizations that qualify for exemption, the type of organization that people often mean when using the phrase “tax-exempt organization” is described in IRC 501(c)(3):

Corporations. . . organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition. . . or for the prevention of cruelty to children or animals.

Other types of organizations that qualify for tax-exempt status include social welfare organizations, labor unions, trade associations, social clubs, veterans’ organizations, and fraternal organizations.

What Is a Non-profit (Not-for-Profit) Organization?*

The term “tax-exempt organization” is often used interchangeably with the term “nonprofit organization.” This can be misleading. A tax-exempt organization meets the criteria in federal law (the IRC) to be exempt from federal income taxes, whereas the status and privileges of a nonprofit organization are determined under state law.

The term “nonprofit organization” generally means a corporation that is not intended to be profit-making. The requirements vary by state but usually take into account the fact that nonprofit corporations typically do not have shareholders or the same business motives as for-profit corporations.

A nonprofit corporation is not automatically a tax-exempt organization. Because the qualifications for nonprofit status vary among states, it is possible for the term “nonprofit organization” to be broader than, narrower than, or identical to the term “tax-exempt organization.” For a nonprofit organization to be exempt from federal income taxes, it must meet the statutory requirements found in the IRC and usually must file an application with the IRS.

What Is a Private Foundation?*

All IRC 501(c)(3) organizations are either public charities or private foundations. Public charities have broad public support and tend to provide charitable services directly to the intended beneficiaries. Private foundations often are tightly controlled, receive significant portions of their funds from a small number of donors or a single source, and make grants to other organizations rather than directly carry out charitable activities. Private foundations are more closely regulated than public charities. Private foundations are subject to penalty taxes

for doing things such as failing to distribute a certain amount of their income each year, making investments that jeopardize their charitable purpose, having excess business holdings, and failing to maintain expenditure responsibility over certain grants.

How are Private Foundations Legally Classified?

There are three different legal classifications of private foundations: private operating foundations, exempt operating foundations, and grantmaking foundations (private non-operating foundations). Private foundations also have special rules and limitations on lobbying activities.

- A private operating foundation devotes “most of its resources to the active conduct of its exempt activities.” They are taxed on net investment income and are subject to restrictions that generally apply to private foundation activity. Donors to private operating foundations have a higher deduction limit than to other private foundations.
- An exempt operating foundation is not taxed on net investment income and receives public support (i.e., donations from individuals or governments). There are also particular rules governing the board of a private operating foundation.
- The main activities of a grant-making foundation (private non-operating foundation) involve making grants, typically to public charities.

What Is a Public Charity? (Source: IRS)

Generally, organizations that are classified as public charities are those that (i) are churches, hospitals, qualified medical research organizations affiliated with hospitals, schools, colleges and universities, (ii) have an active program of fundraising and receive contributions from many sources, including the general public, governmental agencies, corporations, private foundations or other public charities, (iii) receive income from the conduct of activities in furtherance of the organization’s exempt purposes, or (iv) actively function in a supporting relationship to one or more existing public charities. Private foundations, in contrast, typically have a single major source of funding (usually gifts from one family or corporation rather than funding from many sources) and most have as their primary activity the making of grants to other charitable organizations and to individuals, rather than the direct operation of charitable programs.

* Source: Frequently Asked Questions About Tax-Exempt Organizations (Congressional Research Service).

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ALEC POLICY FORUM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL



led organizations” (those with 50% or more of both their boards and staffs representing minorities). While this legislation was ultimately pulled, the attempt by governments to direct foundation assets to preferred causes strikes at the heart of private philanthropy. The great strength of American philanthropy is its ability to experiment and quickly change strategies. Think about how long it takes to change or eliminate a government program that doesn’t meet its constituents’ needs.

The philanthropic tradition in America is based on the idea that voluntary private action offers promising solutions to some of society’s most pressing challenges, the primary means in which we serve our neighbors and strangers alike. The strong American philanthropic tradition is not only dependent on a culture of giving but also a vibrant private sector generates the wealth that makes philanthropy possible.

Philanthropic freedom is essential to a free society. It serves as an indispensable laboratory of innovation in addressing many of society’s greatest challenges. The independence of thought and diversity of interests and perspective produced by having so many committed private actors is the wellspring of this sector’s vitality and must therefore be protected.

Government has a role in ensuring that foundations are truly charitable entities. To that end, it can and should enforce laws against self-dealing and partisan activities. Otherwise, it should allow foundations the freedom to fund such charity as they consider the best means of achieving their charitable ends. Philanthropy, a vital and diverse element of civil society, should be honored as one of America’s finest achievements and as evidence of people’s capacity for individual initiative and self-governance. It must not be burdened with costly and potentially crippling constraints.

Sue Santa is Senior Vice President at The Philanthropy Roundtable in Washington, D.C. The Philanthropy Roundtable’s mission is to foster excellence in philanthropy, to protect philanthropic freedom, to assist donors in achieving their philanthropic intent, and to help donors advance liberty, opportunity, and personal responsibility in America and abroad. The Roundtable has a membership of more than 570.

In the late winter of 2005, The Philanthropy Roundtable formed the Alliance for Charitable Reform in response to an emergency situation on Capitol Hill—proposed legislation from the Senate Finance Committee to impose new regulations on the nonprofit sector including grantmaking foundations. For more information on foundations or the work of the Roundtable, please contact Sue at 202-822-8333 or ssanta@philanthropyroundtable.org.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

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Continued from page 9



state-of-the-art technology to develop these resources in an environmentally safe manner. We have a track record to prove it. Technology has made possible the industry's outstanding environmental record. For example, offshore platforms produce 1.4 million barrels of oil per day, and the U.S. Minerals Management Service

calculates that since 1980 less than .001 percent of that has spilled. The industry has invested more than \$175 billion since 1990 toward improving the environmental performance of its products, facilities, and operations. That's \$582 for every man, woman, and child in the United States.

Every respected energy study on future demand comes to the same conclusion about the next several decades: we need all the energy we can produce in an environmentally responsible manner. We cannot afford to focus on just one energy source, to the exclusion of others. Nor can we rely on sources that are not fully developed and not ready to compete in the marketplace. The studies agree that oil and natural gas will remain our leading energy sources for decades to come.

The bottom line could not be clearer: We cannot put our nation on the path to economic recovery without simultaneously facing up to our energy challenges. We must remove obstacles to domestic energy development and not re-impose those that have been lifted. At the same time, we must avoid harmful measures, such as higher energy taxes, that will discourage the investment required for increased energy development. Let's strengthen our economy and meet our future energy needs by adopting reality-based energy policies. America's future prosperity and energy security are at stake.

Jack N. Gerard is President and CEO of the American Petroleum Institute. To learn more, visit www.partnershipforenergy.com

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Is Your State Ready for Tomorrow's Energy Needs?

A Lesson from the Grand Canyon State

By Jack Cox



Energy is a vitally important issue around the world with immense economic and environmental ramifications that effectively make it the world's currency. It powers our world, but our energy world is changing.

Over the past thirty-five years, oil prices and natural-gas prices have increased sharply even adjusting for inflation. There is now a huge demand for more energy from developing nations such as China and India, concurrent with a significant drop in the value of the U.S. dollar. The increase in oil prices last year dramatically demonstrates the impact of energy costs on individual consumers in every sector of the economy. While gas prices are dramatically lower today, they may rise again.

Political leaders from both parties are calling for the use of alternative-energy technologies such as hydrogen, solar, and wind, but there is widespread confusion about their short-term economic and technological viability. For example, in Arizona renewable energy sources, excluding hydroelectric, account for only 3/100s of one percent of the state's electricity generation. Starting at such a low level in this one state makes it nearly impossible to achieve a 20 percent renewable portfolio standard within twelve years.

It is clear that Arizona and the entire nation will need all the energy it can obtain from all sources, including fossil fuels, nuclear, and renewables. Looking at one state's energy challenges provides national policy makers with an objective approach to determining the nation's energy policy and appropriate action at the state level.

As a result of Arizona's tremendous population growth in recent decades the Communications Institute, together with our partners the Thomas R. Brown Foundations of Tucson and Arizona State University, began working with the administration of Governor Janet Napolitano on an independent study that focused on a single question: *"How much energy is Arizona going to need if we add 1 million new homes and what are the best available sources?"*

The lead researcher, Professor Timothy Considine of Penn State found that if a million more homes are built in Arizona in the next decade, at least 20 million megawatts in new generation power will be required. Where will this increased power generation come from, and how will it affect the ongoing debate over carbon dioxide emissions?

Solar technology, although carbon-free and maturing as an energy source, cannot at this time meet this growing demand. If all existing coal-fired generation plants were phased out in an effort to reduce emissions, the state would be forced to rely on natural gas and existing nuclear and hydroelectric power.

If the state depends primarily on natural-gas fired plants and does not expand either coal or nuclear capacity, the study found that consumers can expect electricity rates to jump by twenty percent in the next six years and thirty-three percent in the next eleven years.

This scenario would increase electricity costs to consumers by nearly eighty percent in the next twelve years and result in a major impact on individual consumers as well as the state's overall economy. The reality is that existing coal, hydroelectric, and nuclear capacity are valuable assets that provide a low-cost buffer that shields consumers from greater rate increases.

With the lessons learned from this analysis of one state's energy needs, perhaps it is possible to craft an effective national energy policy that minimizes polemics and maximizes the use of economic and technological analysis. Here are some key points from the findings:

1. The nation needs a balanced portfolio of generation assets including oil, natural gas, coal, nuclear, and renewable sources, not reliance on hand-picked sources.
2. Renewable energy technology, excluding hydroelectric power, can provide new energy sources for the long-term future, but remains a very small percentage of total energy generated by the nation.
3. Reliance on natural gas and renewable sources of energy and rejection of coal and nuclear will significantly increase consumer prices for energy in the short term.
4. Coal and nuclear need to be recognized as essential to providing electricity in the short-term and bridges to the long-term future.
5. Energy efficiency and conservation policies encourage the best use of scarce resources.

6. All energy sources should be judged by their economic and technological viability, independent of government subsidies, in order to insure the optimum use of taxpayer's dollars and energy expenses.

Meeting the future energy needs of every state as well as the nation is critical to our economic and national security. The current financial crisis compounds this fact. Policy makers need credible economic and engineering analysis to navigate this challenge. This lesson from Arizona makes clear that every viable source of energy will be needed to meet tomorrow's needs. Wishing this fact away could be a very expensive mistake and, ultimately, it will be the American consumer who will pay.

Jack Cox is President of The Communications Institute, a non-profit consortium of national academic research centers and scholars that encourages discussion of critical issues in society and sponsors joint research projects such as the Arizona energy research study. He is also publisher of AnalysisOnline (www.analysisonline.org). Contact: cox@tci1.org or www.communicationsinstitute.org.





ALEC's New Model Bills

All the new Model Bills presented here were approved at ALEC's States and Nation Policy Summit in December 2008 in Washington, D.C. The full text of these and all ALEC Model Bills is available to ALEC members online at www.alec.org.

CIVIL JUSTICE TASK FORCE

Amendment To The Class Action Improvements Act

The provisions of ALEC's Model Class Action Improvements Act has been amended to strengthen the right to appeal class certification decisions immediately. These amendments alter Section 2(h) to allow an immediate or "interlocutory" appeal of a class certification decision and add that while under appeal, proceedings at the trial level should be stayed.

COMMERCE, INSURANCE, AND ECONOMIC DEVELOPMENT TASK FORCE

A Resolution Relating To Residual Markets And Reinsurance Funds

The resolution opposes a federal takeover of the reinsurance industry, and supports mitigation efforts that help homeowners and communities secure themselves against natural disasters. It also opposes the creation of state-run homeowners' insurance companies.

Union Financial Responsibility Act

Recognizes that the federal Labor Management Reporting and Disclosure Act (LMRDA) provides for the reporting of financial data for a small segment of labor organizations. This act intends for all labor organizations within the jurisdiction of a state not directly subject to the reporting requirements of the LMRDA to provide the relevant financial data to their members as prescribed.

Employee Secret Ballot Protection Act

This act provides that all qualifying union certification efforts in a state must be approved by a majority of collective bargaining unit employees who vote in a secret-ballot process. The state labor official/agency cannot recognize an exclusive bargaining representative without a majority of secret ballots having first been cast in the affirmative for that exclusive bargaining representative. The Act defines the denial of secret-ballot elections as an unfair labor practice. The Act establishes penalties and remedies for violations of the Act's provisions.

ALEC's Recommendation For 2009

Transportation Reauthorization

The federal government plays an important role in the operations and maintenance of the United States surface transportation system and must ensure that the system meets national defense needs, addresses fairly and equally the mobility needs of all Americans, and facilitates the safe and efficient flow of interstate commerce. ALEC supports the continuation and preservation of a federal-aid surface transportation program. The federal program should direct spending to national priorities while allowing for state, local, and regional area flexibility.

EDUCATION TASK FORCE

Full Faith And Credit For Properly Constructed IEP Act

Under the Individuals with Disabilities Education Act (IDEA), all students are entitled to a free and appropriate public education, and school districts are required to provide services in accordance with an individualized education plan (IEP) that outlines the particular educational needs and appropriate services for each child. Because IEPs are not currently "portable" documents (i.e., recognized from state-to-state, or even from district-to-district within a state), a student's IEP must often be redrafted when a family moves, jeopardizing students' rights to appropriate services; impeding the mobility of an entire family; and increasing administrative costs for states and local governments. This act requires that "receiving" school districts recognize the handicapping conditions, required educational services, and all other requirements specified within the existing IEP; and ensure that the specific educational services are provided to the student within 30 days.

HEALTH AND HUMAN SERVICES TASK FORCE

Freedom Of Choice In Health Care Act

This act prohibits the legislature from fining citizens for choosing to obtain or decline health care coverage, or for participation in any health system or plan.

Rescission External Review Act

This act assures that covered persons have an opportunity for an independent external review when health plan coverage is rescinded.

Resolution in Support of the PhRMA Code and Corporate Self-Regulation

Memorializes the PhRMA Code on Interactions with Healthcare Professionals.

NATURAL RESOURCES TASK FORCE

State Science Advisory Board Act

This Model Bill creates an independent, high quality review team of scientists charged with assisting legislators in understanding issues of a strictly scientific nature relevant to policymaking decisions.

PUBLIC SAFETY AND ELECTIONS TASK FORCE

Conditional Early Release Bond

This act creates a means whereby a state can, after conviction, release a person. The Act would also establish how conditions on the release may be set and how the private sector may be used in determining whether or not those conditions are met.

Resolution Opposing Taxpayer Funded Political Campaigns

This resolution opposes taxpayer financing of political campaigns. Most public financing regimes provide additional taxpayer matching funds to qualifying candidates whose opponent chooses not to take public funds, thereby penalizing privately-funded candidates, campaigns, and their donors for exercising their rights of free speech and association. The Resolution holds that taxpayer financing does not reduce the average expenditures of candidates and their campaigns, and has not removed the influence of special interest money.

TAX AND FISCAL POLICY TASK FORCE

Improving Tax Transparency

This legislation directs the state budget office to create and maintain a searchable database of each tax rate for all taxing districts in the state.

Amendments To An Act Relating To Creating A Searchable Budget Database For State Spending

Amends the current Taxpayer Transparency Act by adding a timeline for when the database must be updated with new information and a timeline for when agencies must update the database director with new information. Furthermore, the amendments will put in place language that defines the compliance terms for the director relating to their duties of administering the database.

Amendments To Resolution To Permanently Repeal The Federal Unified Gift And Estate Tax

These amendments update and modify the Resolution to Permanently Repeal the Federal Unified Gift and Estate Tax to update numbers and reflect the Bush tax cuts.

Resolution Urging Congress To Update Tax Treatment Of Cell Phones

This resolution urges the United States Congress to repeal the IRS tax code treatment of cell phones and similar telecommunications equipment as listed property and burdensome reporting requirements for employers.

Amendments To The Sales And Use Tax Collection Protection Act

This act allows retailers to challenge an out-of-state tax administrator seeking to impose a remote sales tax collection burden. The proposed amendment includes a provision ensuring that states that don't have long arm statutes coextensive with federal due process standards would nonetheless be able to receive the declaratory judgment provided by the Act consistent with federal due process standards.

Amendments To The Resolution To Oppose NCCUSL Effort To Rewrite The Uniform Division Of Income For Tax Purposes Act

These amendments update and modify the Resolution to Oppose NCCUSL Effort to rewrite the Uniform Division of Income for Tax Purposes Act.

Model Resolution On Limited Government

This resolution encourages Congress and legislatures to recognize and honor the necessary limitations of government, and to restore greater economic liberty to their citizens for the sake of freedom itself.

An Act Relating To Performance Audits Of Government Entities

This bill establishes independent performance audits to ensure accountability and guarantee cost-effective use of taxpayers' dollars. The audit will be conducted by the state auditor, who will be free from legislative interference. The legislature shall hold at one least public hearing to consider the findings of the audit.

TELECOMMUNICATIONS AND INFORMATION TECHNOLOGY TASK FORCE

Amending Wireless Communications Tower Siting Act

These amendments to the Wireless Communications Tower Siting Act require local governments to reach a decision on whether to approve or reject siting or collocation permit applications within 75 days, and provide that failure to reach a decision results in the permit being deemed approved.

Climate Change Action Will Have to Wait

By Matt Warner

Efforts to take action against climate change in the United States have gained momentum the last two years, but economic woes may be slowing things down. In April 2007 the U.S. Supreme Court told the Environmental Protection Agency it must address the question of whether carbon dioxide is a danger to public health and welfare which led to the June 2008 release of EPA's plans to regulate greenhouse gases under the Clean Air Act. The release came on the heels of a congressional push to impose an economy wide cap-and-trade program for greenhouse gases. The measure failed, but its progeny has already resurfaced ready for the 111th Congress.

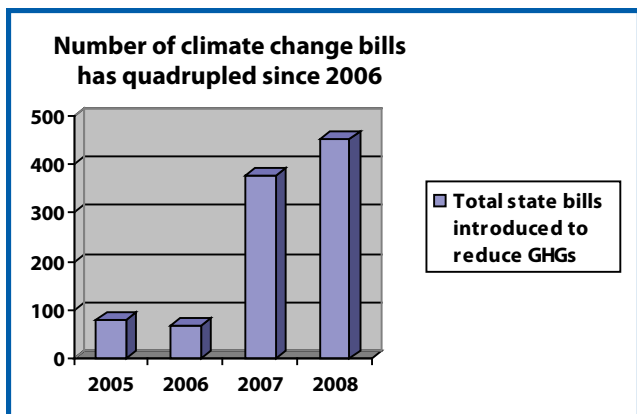
While all three branches of the federal government were moving us closer to carbon cuts in some form, state legislatures were busy, too. The number of state-level proposals introduced that directly or indirectly cut greenhouse gas emissions has more than *quadrupled* since 2006 (figure 1). To date, states have approved, on average, close to a dozen measures each—all premised on the need to reduce greenhouse gas emissions and shift from conventional sources to alternative energy. These efforts range in scale but include mandates for renewable energy use and regional targets for greenhouse gas reductions.

While state legislators continue to grapple with the unsettled science and legal questions associated with these efforts, one thing is certain: It's going to cost money. Historically some have tried to argue that limiting our carbon-based economy is a smart investment in our future. Take our medicine now, and tomorrow we'll be better off. But no one can be sure how long it will be before we truly have viable alternatives to the conventional sources that have provided affordable, reliable, and abundant energy to the nation's economy for decades. And even if someone did know, the task of orchestrating that transition through command and control is beyond the capacity of government design.



Now we've arrived at the current U.S. financial crisis and, remarkably, the argument that heaping additional costs on ourselves will prove an economic silver bullet continues to be popular. In his 2009 State of the State Address, New York Governor David Paterson made no bones about the sorry state of the economy but insisted more government funding for green research is the answer. In a Senate hearing she chaired last year, Sen. Barbara Boxer said green jobs were rescuing her state of California from the foreclosure crisis. But actions speak louder than words and lately mitigation proponents are showing they may have to delay their more ambitious plans for economy-wide cuts.

During a December 2008 U.N. conference in Poland, senior aides to key Congressional leaders leading the charge to combat climate change, hedged on the question of when the United States will adopt a climate change policy. They weren't just being coy. The earlier deadline of December 2009 began to look too uncertain and no one wanted to make any promises. Then in January House Speaker Nancy Pelosi suggested 2009 was not the year for climate change legislation, despite being one of the most ardent voices calling for immediate action on the issue. But this makes sense. Asking the American people to bet large on European-



style emissions cuts at a time of high unemployment, record home foreclosure rates, and decreased economic growth is a tall order.

And the delay may be just the first blow dealt to the pro-mitigation agenda. In a pre-inauguration letter to President Obama that drew ire from environmentalist groups, California governor Arnold Schwarzenegger explained that in order to make serious use of the President's proposed near-trillion dollar stimulus plan

with its myriad infrastructure projects at the state level, environmental red-tape would have to be either waived or greatly streamlined. The Governor has a point. If the goal of the stimulus, at least in large part, is to administer an economic jolt in the short-term, states may need to evaluate whether current environmental laws and practices, even those recently passed, may be out of step with that goal.

At the very least, the financial crisis should put a heavy burden on policymakers going forward to detail all costs and benefits associated with mitigation policies and to include provisions that require annual reporting and legislative action for renewal. This would provide some transparency and accountability for state agencies as well as a way out if certain cost limits are exceeded. At a time like this everyone has to get back to basics. The economic well-being of the American people should be priority one.

Matt Warner is Director of the Natural Resources Task Force at ALEC.

Member News

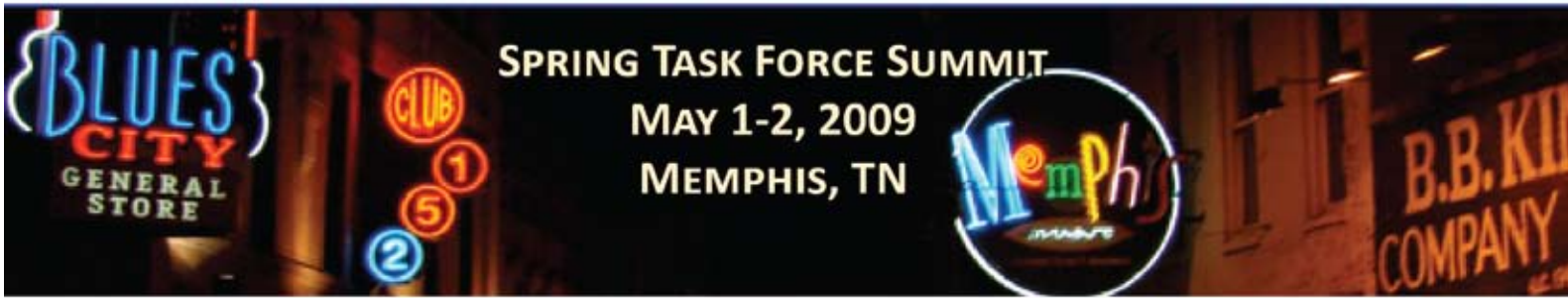


4th Annual ALEC South Dakota Pheasant Hunt

For the fourth year in a row South Dakota ALEC State Chair Rep. Hal Wick hosted a pheasant hunt for ALEC public and private sector members. The event raises money for the ALEC South Dakota Scholarship Account, and allows members to spend time together in the pheasant-filled fields of South Dakota, and during dinners in the evening. Once again members were treated to a day of hunting at R&R Pheasant Hunting in Seneca, SD, with owner Sal Roseland. At day's end the party shot some Five-Stand before sitting down to a wonderful meal of prime rib. The second day was spent hunting on the farm of Duane and Marlyn Karst. Everyone had a great time and brought home plenty of pheasants. Plans are already underway for next year. We can't wait!



UPCOMING ALEC MEETINGS




BLUES CITY
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Memphis

B.B. KING COMPANY

SPRING TASK FORCE SUMMIT
MAY 1-2, 2009
MEMPHIS, TN



36TH ANNUAL MEETING
JULY 15-18, 2009
ATLANTA, GA



STATES & NATION POLICY SUMMIT
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WASHINGTON, D.C.

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